

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-7010

In The
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

ELLIE MARTELL,

Appellant,

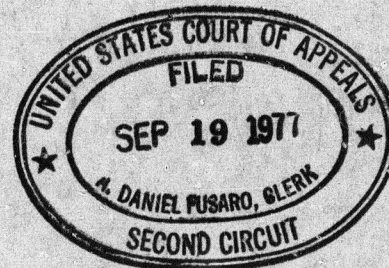
v.

CBS, Inc., WCBS AM RADIO
STATION, New York, N. Y.

Appellee.

-----X

Case No. 77-7010



APPENDIX FOR THE APPELLANT
ELLIE MARTELL

BPLS

September 1977

ELLIE MARTELL
Appearing Pro Se
6014 Adams St.
West New York
New Jersey 07093
(201) 854-2939

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United States District Court

FOR THE

JUDGE CWEN

Southern District of NY

76 CIV. 19 58

CIVIL ACTION FILE NO. _____

ELLIE MARTELL

Plaintiff

v.

SUMMONS

CBS INC
WCBS AM Radio
STATION, NEW YORK NY

Defendant

To the above named Defendant :

You are hereby summoned and required to serve upon ELLIE MARTELL

plaintiff's attorney , whose address 6014 ADAMS ST WNY NJ 07093

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT

Clerk of Court.

Deputy Clerk.

Date: APR 29 1976

[Seal of Court]

(1)

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
:
ELLIE MARTELL,
:
Plaintiff,
:
-against-
:
CBS, Inc.; WCBS AM RADIO
STATION, New York, NY
:
Defendants.
:
----- x

76 Civil 1958

COMPLAINT FOR
INJUNCTION, DAMAGES
AND DECLARATORY
RELIEF

JUDGE RICHARD OWEN

I. Jurisdiction

1. This is an action arising under the Constitution and laws of the United States, seeking redress for the deprivation of rights, privileges secured to the plaintiff under the First, Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution as hereinafter more fully appears. The jurisdiction of this Court rests upon 42 U.S.C. SS 1983 and 1985, and on 28 U.S.C. SS 1331 and 1343 and other sections.

II. The Parties

2. The plaintiff is a citizen of the United

States who has resided within the jurisdiction of this Court during most of her life (attached as Exhibit 1). For the past eleven years she has worked full time as a utility consumers' consultant, watchdog and advocate who sought accurate phone bills and fair and reasonable utility rates and practices by investor-owned utility corporations (IOU's) nationwide. The plaintiff has appeared for herself and other consumer groups before state and federal regulatory commissions and in the Courts.

3. The plaintiff has represented such groups as the United Automobile Workers' Community Action Program (CAP) in New York State, Michigan, Indiana, Ohio, New Jersey and in Washington D. C. She has also appeared recently before the New York State Public Service Commission in behalf of members, retirees, their families and neighbors of Locals 2601, 2602, 2603 and 2604 of the United Steelworkers of America. She has performed consulting services for the City of Buffalo and County of Erie, New York. She is the author and publisher of trend-setting educational booklets newsletters, "Consumer Insight", "The Phone Ranger", etc. and head of a special consumer news service to the media to assist public-spirited members of the press with the interpretation of complicated PSC Orders and Opinions, often released by the PSC right on deadline. She has provided in some notable cases, the sole consumer viewpoint to the press following PSC release of rate decisions (Exhibit 2).

Since 1965, without interruption, the plaintiff has sponsored Phone-Bill Seminars for consumers to learn their rights, how to audit their phone bills, how to apply for a refund of overcharges, complain to their regulatory agencies, train women switchboard operators to upgrade their skills to become Communications Executives, with such training then not obtainable elsewhere. The plaintiff in addition, originated a pilot program approved by the OEO, OEO Federal Office of Economic Opportunity to train disadvantaged youths (many of whom could not complete high-school) and for whom the plaintiff had received promises of placement in well-paid jobs upon completion of training for almost 100% of her class of around 25 students from for a the Newark, New Jersey area. Officials of other anti-poverty agencies, much interested in the plaintiff's innovative program and success in advanced job placement, sat in on some of plaintiff's classes with a stated view toward starting similar programs by their agencies, perhaps nationwide, with large potential use of the plaintiff's services.

The plaintiff's program to train disadvantaged youths as Communications Executives had gotten off to an excellent start with extremely high class morale and practically all students anxious to learn and succeed, at the time of the defendant's libelous, slanderous and defamatory broadcast on March 31, 1971, during prime time covering the tri-state area of New York, New Jersey and Connecticut.

4. The defendants CBS, INC. and its wholly owned and fully controlled subsidiary, WCBS AM RADIO STATION, NEW YORK, are profit-oriented corporations engaged in the businesses of radio and television broadcasting, broadcasting of "news", events, and advertising for profit, licensed by the Federal Communications Commission in Washington, D. C., subject to the FCC's rules and regulations pursuant to the Communications Act of 1934, with stringent obligations to perform in accordance with the Fairness Doctrine and the public interest. Defendants' residence is at 51 West 52 Street, New York, New York, which is the address of its national headquarters.

III. The Defendants' Harmful
and Unlawful Means and Acts

5. On April 30, 1971 at approximately 5:00 P.M. the plaintiff whose radio was tuned to 88 on the AM Radio Dial with the call letters of WCBS AM RADIO NEW YORK, suddenly heard the name of her organization mentioned in a newscast by the news announcer. Since the tone of the remarks sounded urgently scandalous and highly derogatory the plaintiff telephoned the radio station immediately at (212) 765-4321 and asked to speak to the News Editor. She identified herself and asked him to repeat word for word exactly what the newscaster had said about her organization, the American Telephone Consumers' Council.

The editor responded that he could not read the

text to me and that he had "picked up" the news item from an Associated Press wire story. I argued vigorously that the remarks sounded libelous, erroneous and severely harmful to me professionally and that nobody had contacted me from WCB3 or CBS or from any news organization nor any newsperson or researcher to inquire or verify any news about my organization ATCC or me. The editor insisted that he could do nothing to inform me further about the news item about myself, nor to correct it and in no way did he handle my complaint nor do anything at all about my request to verify a severely damaging story being broadcast to over two million listeners during prime time news programs. I again insisted that the story I had partially heard be omitted from the next "round" pending verification from me about its content. He refused any change at all. I therefore offered to tape for him over the telephone an answer to any charges made against me in order to provide a proper balanced story for the public and in order to present both sides to what sounded like an important controversy (according to the news treatment and sharp headline). However, the news editor simply kept refusing every request that I made, with "sorry, I can't help you."

As soon as I hung up, I dialed Associated Press at 50 Rockefeller Plaza offices, New York City and asked to speak to the Managing Editor. I asked the person who answered to read to me the text of the AP wire story about the American Telephone Consumers' Council which was being carried right now over WCB3 AM Radio News. The editor who seemed to know about the story refused to read it to me or even any part of it. He refused to

discuss the story further saying he was too busy. I asserted this was a severely damaging story and that AP had a responsibility to at least tell the target of the story (me) what had been transmitted over AP-owned wires and originated by AP without any verification or contact with me whatsoever. Whereupon he told me the story had originated with the Newark Star Ledger and that AP had simply "picked it up."

I immediately phoned the Newark Star Ledger requesting the City Editor. He read me the text of the Ledger story and I took notes. I informed him that allegations and charges and statements made about my organization were absolutely false libelous, slanderous, defamatory and severely damaging to my professional reputation. He offered to correct any errors and I said I would phone for an appointment at the Ledger offices in Newark, N. J. He expressed regret about the incident.

The story contained such remarks as the "shady deals" of ATCC and referred to "collection of items for UCC by ATCC".

In the meanwhile, I received an urgent phone call from Don Elberson, Executive Director of the Consumer Assembly of Greater New York from an outside phone booth. He sounded shocked and strained and very upset as he told me about the "news" he had just heard over the radio in his automobile driving home.

Shortly after Mr. Elberson had called, I heard the the story about ATCC being repeated over WCBS AM Radio and it made me feel sick and helpless and terribly discouraged. Only American Telephone Consumers' Council had been named of which

6. Immediately after hearing the full story about my organization ATCC broadcast over WCBS AM Radio over my previously stated and strenuous objections, I phoned WCBS AM Radio again and asked for the Local News Editor. I then informed him of the likelihood of a libel suit against WCBS AM Radio if he did not immediately tape my response to his erroneous, false, libelous, slanderous, defamatory and severely damaging news story. I offered him the opportunity of mitigating the damages to my reputation and livelihood, but he flatly refused to do anything at all about my request. He recited again that this was an AP wire story and he planned to run the same news story again over WCBS regardless of what I said. I argued that I believed that a news editor could use his news judgment and omit, change or add to stories, but he simply repeated that this was up to AP.

7. I heard the story re run for the third time before turning off the radio.

8. On Sunday, May 2, 1971 I visited the Newark Star Ledger in Newark and the City Editor, Mr. Victor Musetta, assigned a reporter to write it, which appeared on Monday May 3, 1971. I phoned Alvin L. Oliver in Newark Monday A.M. and he read me the story, which satisfied me and I phoned the Ledger to thank the staff for allowing me access to respond fairly.

9. I phoned WCBS AM Radio and told the Local News Editor to watch the AP wires for a response from me to their terrible Friday evening story about ATCC.

10. I phoned WCBS again and asked the newsman who answered whether he had seen anything on the AP wire about my organization ATCC. He said he did not. He checked the wire for me and confirmed that no story appeared at all on Monday on ATCC.

11. I phoned Associated Press and asked the Managing Editor why AP had not "picked up" the Star Ledger Story headlined, "ATCC ASSAILS UCC'S BELL-DOMINATED BOARD". He replied there was no story there and abruptly hung up.

12. I phoned WCBS back and informed the News Editor that regardless of AP's wire, WCBS AM Radio had libeled me and WCBS was responsible and repeated my assurance of the likelihood of a legal action if WCBS did not take reasonable and IMMEDIATE STEPS TO BALANCE THEIR FALSE AND DAMAGING STORY OF EVENING WITH MY RESPONSE. The Editor flatly refused to do anything at all about my request and no story or update or item was transmitted over WCBS relating to my response to Friday's report. Another Newark newspaper, the Newark Evening News published my response to a false report about ATCC released in Newark and I was satisfied. Only the giant WCBS AM Radio News refused to make any correction or response whatsoever to its false and severely damaging newscast.

IV. Irreparable Injury

As a direct and immediate consequence of the defendants' actions and failure to take even one small step to correct their false and damaging newscast, after other reputable news organizations did provide prompt and fair access, the plaintiff lost all

of her contracts and opportunities for income, all at the same time. (attached affidavit of ELLIE MARTELL).

V. The Remedy

13. By reason of the defendants' absolute unconcern about its use and abuse of the public's airwaves, and its enormous revenues received from adversaries of the plaintiff with whom she was and still is in litigation before the U. S. Court of Appeals, District of Columbia Circuit, the plaintiff could be again attacked on the defendants WCBS AM Radio News and other CBS Inc. owned facilities.

14. The plaintiff's adversaries have spent at their discretion over \$36 Million in 1974 alone for mass media advertising and plaintiff's adversaries are in contact with WCBS News executives. The plaintiff plans to continue to oppose unfair rates and practices and she fears that the defendants may, as a favor to a major advertiser, potentially issue additional false and outrageously damaging "news" as before.

15. Plaintiff seeks relief against the named defendants and others found to be acting in concert with them.

16. The Plaintiff has no adequate remedy at law for the deprivation of her property, rights to earn a livelihood, move freely in the area of her choice to live and work without fear of reprisal and punishment and being held up to public scorn by paid beneficiaries of her adversaries that are in present litigation with her.

17. The plaintiff has had no opportunity to receive from the defendants, requested material and program scripts that are under the control of the defendants and also the program tape of April 30, 1971 of the newcast complained about herein regarding ATCC. On March 22, 1976 the plaintiff made still another attempt to receive the tape and/or written text of the subject news report from A Mr. Leon Rice at CBS. The plaintiff was again refused, and told that only a subpoena could yield her material.

18. The plaintiff seeks to effectively deter WCBS AM Radio, CBS, Inc. and others from such outrageous, publicly harmful and privately damaging behavior by having the Court award her treble damages in this action.

WHEREFORE:

Plaintiff prays for a permanent injunction restraining defendants from further untruthful and damaging remarks about her and her organization over defendants' facilities and by defendants' employees, including libel slander and defamation of character and unlawful stifling of her civil rights. In addition, she prays for a declaratory judgment as to such rights, together with compensatory damages in the amount of \$1.75 million, punitive damages in the amount of \$ 5.25 million, the costs and disbursements of this action including a reasonable compensation for consultants' time, together with such other and further relief as to this Court may seem just and proper.

Respectfully submitted,

Ellie Martell
ELLIE MARTELL

Appearing Pro-Se

Residence:
6014 Adams St.
West New York, N.J.

Phone Seminars Draw Firms' Executives

By CAROL MATHEWS

Hayden Stone Inc., Price Waterhouse, Macy's, Revlon, ITT Corp. and Hilton Hotels Corp are among companies that have sent executives to the American Telephone Consumers' Council for training in the most effective handling of telephone problems and costs.

Even people from RCA Communications Corp., which recently bought the only phone company in Alaska, have attended ATCC seminars.

Now, the consumer-oriented council is also taking calls from individual users at 362-9381 and giving advice for free, according to Ellie Martell, director of the group.

"Most callers need help solving problems of service and billing," Mrs. Martell says.

In fact, the council receives almost as many calls for help as the Public Service Commission, according to Mrs. Martell. The PSC is the state utility regulatory body.

Series of Seminars

Series of Seminars

The council, which has been active in the recent hearings in this city on the phone company's request for a rate increase, just announced a new series of seminars for women.

"We are offering a workshop especially for women because the phone company trains them as operators, but not as communications consultants, who are almost exclusively men," she said. "We think there is a need in every firm for someone who knows how to talk to the phone company."

Mrs. Martell noted that, because of a lack of familiarity with existing phone equipment, many firms can end up with equipment they don't absolutely need.

The workshop will explain how to spot an overcharge, how to apply to the phone company for refunds, how to choose the most efficient system for a business, how to control phone costs, and so on, according to Mrs. Martell.

Special one-day seminars being held in August, in addition to the women's workshop, are being aimed at company executives such as those from RCA and ITT who have attended past meetings.

Another Problem Looms

One of the problems to be covered is the prospect, if the current request for increased phone charges here is granted, of much higher phone bills for small and medium-sized companies, according to Mrs. Martell.

"The cost of the board system used by smaller companies will go up by more than 100 per cent

if the increase is granted," she says.

This compares with a prospective increase of only 1 per cent for large companies using the Centrex system, according to the council.

Centrex is designed for users with 1,000 telephone extensions or more.

The council has been active in rate hearings in Washington and around the country, Mrs. Martell says.

"Until last year, Bell System witnesses were practically the only ones to give testimony where millions of dollars in rate increases were involved," she says.

The council-sponsored sessions do not come cheap. The women's workshop, which will meet every Thursday afternoon from Aug. 7 to Oct. 30, charges \$175 a month, while the one-day seminars for executives run \$100 each.

**AMERICAN TELEPHONE
CONSUMERS' COUNCIL**

Box 2288, General P.O., N.Y. 10001

PHONE NUMBER: (201) 854- 2939

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ELLIE MARTELL,

Plaintiff,

-against-

CBS, Inc.; WCBS AM RADIO
STATION, New York, N.Y.,

Defendants.
-----x

Index No. 76 Civ. 1958
(Pro Se)
(Judge R. Owen)

MEMORANDUM IN SUPPORT OF MOTION
BY DEFENDANT CBS INC. FOR DIS-
MISSAL OF THE ACTION

COUDERT BROTHERS
PAN AMERICAN BUILDING
200 PARK AVENUE
NEW YORK, N. Y. 10017

(3)

76
100
100
100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ELLIE MARTELL,	:	INDEX NO. 76 CIV. 1958
Plaintiff,	:	(JUDGE OWEN) (PRO SE)
-against-	:	
CBS, INC.; WCBS AM RADIO	:	
STATION, New York, N. Y.	:	
Defendants.	:	

-----X

MEMORANDUM IN SUPPORT OF MOTION
BY DEFENDANT, CBS INC. FOR
DISMISSAL OF THE ACTION

Preliminary Statement

The plaintiff in this action is suing pro se and attempts to set forth in an inartistically drawn and confusing complaint a claim of libel or slander (Pars. 3, 5, 6, 12, 16 and the "Whereof" clause of the complaint) to the effect that she was defamed by the defendant's alleged broadcast of April 30, 1971 (Par. 3, p. 3 of the complaint) purportedly made over the WCBS Radio Station (Par. 12, p. 8 of the complaint). It appears from the summons annexed to the complaint that the summons and complaint were served on the defendant on May 5, 1976 - more than five years after the broadcast complained of. The action was filed on April 29, 1976.

Firstly, the defendant CBS Inc.* contends that since the alleged broadcast occurred (as alleged in the complaint) on April 30, 1971 and since the action was not commenced until April 29, 1976, the action is barred by the one (1) year New York Statute of Limitations (§215 CPLR) and the claim should be dismissed under Rule 12(b)(6) of the FRCP.

Secondly, the defendant contends that the complaint fails to allege facts showing diversity of citizenship between the parties under §1332(a)(1)(c), Title 28 U.S.C.; that the Court, therefore, appears to lack jurisdiction of the subject matter and that the action should, therefore, be dismissed under Rule 12(b)(1) of the FRCP.

POINT I

THE ONE (1) YEAR STATUTE OF LIMITATIONS OF NEW YORK, IN WHICH STATE THE ACTION HAS ARISEN, HAS LONG RUN WITH RESPECT TO THE DEFENDANT HEREIN AND AN ORDER SHOULD, THEREFORE, ISSUE BARRING THE CONTINUATION OF THE ACTION AS AGAINST THE DEFENDANT.

It appears from the complaint that the plaintiff is complaining about a WCBS Radio Station broadcast of

* It appears from the affidavit of an officer of CBS Inc. that the WCBS Radio Station is not a subsidiary of CBS Inc., as alleged in Par. 4 of the complaint, but is a radio station owned and operated by CBS Inc.

April 30, 1971 which she claims defamed her (Par. 3, p. 3 of the complaint) and the claim, as alleged in the complaint, is obviously intended to be a common-law cause of libel or slander although the complaint merely alleges conclusory statements and fails to allege any facts showing that defamatory language was broadcast of and concerning the plaintiff herein.

The allegations of the complaint do not in any way constitute a cause or claim under the Civil Rights Acts (Title 42 U.S.C. 1983 and 1985). The claim of libel or slander does not come under those Civil Rights Acts. Azar v. Conley, 45 F. 2d 1382, 1389 (6th Cir. 1972).

There are no allegations in the complaint grounding a claim or cause under the aforesaid sections of 42 U.S.C. In other words, the attempted cause or claim is simply one for common-law libel or slander and not a civil rights claim for "deprivation of any rights, privileges, or immunities secured by the Constitution and Laws [of the United States] ***". Travers v. Paton, et al., 261 F. Supp. 110, 112 (D.C., Conn., 1969).

The Federal Courts are, therefore, disinclined to extend federal jurisdiction over such a state tort of libel or slander under the eegis of 42 U.S.C. 1983 and/or 1985,

although indiscriminately referred to in the complaint.
Travers, p. 116.

In any event, it has been held that "since the Civil Rights Act contains no provision limiting the time within which an action thereunder may be brought, the applicable Statute of Limitations is that which the State would enforce had the action seeking similar relief been brought in State Court". Henig v. Odorioso, 385 F. 2d. 491 (3rd Cir., 1967), cert. denied 390 U.S. 1016 (1968) in which Swan v. Board of Higher Education of City of New York, 319 F. 2d 56 (2d Cir., 1963) and other cases were cited.

To the same effect see: Cross v. Board of Supervisors, 326 F. Supp. 634 (1968, U.S.D.C.N.D., Cal.) aff'd. 442 F. 2d 362 (9th Cir. 1971); Johnson v. Dailey, 479 F. 2d. 86, 88 (8th Cir. 1973) in which O'Sullivan v. Felix, 233 U.S. 318, 34 S. Ct. 596, 58 L. Ed. 980 (1913) and other cases were cited.

Thus, in our case, the one (1) year New York Statute of Limitations (§215 CPLR) is applicable:

"Sec. 215 CPLR.

Action to be commenced within one year ***
The following actions are to be commenced
within one year:

* * * * *

3. An action to recover damages for *** libel, slander, false words causing special damages, or a violation of the right of privacy under 51 of the Civil Rights Law."

Thus, the Statute of Limitation ran from April 30, 1971, when the complained of broadcast occurred, to April 30, 1972. The action was not commenced until April 29, 1976 - obviously more than one year after the running of the Statute of Limitations - and is barred.

In nearly all jurisdictions, including the State of New York, the Statute of Limitations for matters actionable per se begins to run at the time of the publication, that is, when the defamation is communicated to a third-party. It is apparent from the complaint that the plaintiff must of been aware of the alleged broadcast of April 30, 1971 which is the date when the said broadcast allegedly was made. In any event, the fact that the plaintiff may not have found out about the alleged utterance as broadcast over the radio program, until a later date does not toll the Statute of Limitations. Kern v. Hettinger, 303 F. 2d. 333 (2nd Cir. 1962).

In other words, the Statute of Limitations starts running on the date when the alleged defamatory material is first communicated to third-parties - that is, the date of its first publication. Zuck v. Bair, 203 F. Supp. 666, (S.D.N.Y. 1962), reversed 317 Fed. 2nd 727 (2nd Cir. 1963).

Thus, the Statute of Limitations in the instant case began running on April 30, 1971 when the broadcast was allegedly made.

The fact that the complaint is inartistically drawn and does not allege the usual words of art for a defamation cause of action does not in any way deter the action from being within "the ambit of tortious injury for defamation which the legislature has set a one (1) year Statute of Limitations".

In the leading case of Morrison v. National Broadcasting, 19 NY 2d 453, 280 NYS 2d 641, 227 N.E. 2d 572 (N.Y. Ct. App., 1967) the plaintiff had been a participant in a rigged quiz show and sought damages for injury to his reputation. The complaint charged the commission of an "intentional wrong", instead of the traditional defamation torts of libel and slander. The Court nevertheless applied the one (1) year Statute of Limitations and quoted from the Restatement of Torts, Section 559 (19 N.Y. 2d at 459, 280 N.Y.S. 2d at 644-45):

"In applying a Statute of Limitations, this Court declared some years ago, '(W)e look for the reality, and the essence of the action and not its mere name' *** Concluding as we do that this cause of action sounds in defamation, it would be highly unreal and unreasonable to apply some Statute of Limitations other than the one which the Legislature has prescribed for the traditional defamatory torts of libel and slander *** Accordingly, in

enacting a one-year Statute of Limitations for 'libel' and 'slander'*** the Legislature should be understood to have established the policy that any action to recover damages for injury to reputation must be begun within that period. A contrary result might very well enable plaintiffs in libel and slander cases to circumvent the otherwise short limitations periods by the simple expedient of 'redescribing (the) defamation action to fit this new 'noncategory' of intentional wrong. (Kroner, et al, Torts, 1966 annual survey of American Law, pp. 209, 215)."

In the case of Noel v. Interboro Mutual Ind. Ins. Co., 31 A.D. 2d 54, 55, 295 N.Y.S. 2d 399, 400 (1st Dept. 1968) the plaintiff sought to "circumvent the one-year limitation period applicable to defamatory actions by mis-describing the tort as injurious falsehood or interference with economic relations." The Court applied the defamation Statute of Limitations (31 A.D. 2d at 55-56, 295 N.Y.S. 2d at 400-401). The Court held as follows:

"The issue of course is not the name that the plaintiff may give to his second cause of action but the ascertainment of the Statute of Limitations applicable to its allegations *** 'A person possessing a cause of action in libel or slander may not avoid the Statute of Limitations applicable to such a cause of action by the device of claiming that the cause of action is an action on the case to which a longer Statute of Limitations is applicable'".

Also see Auld v. Mobay Chemical Co., 300 F. Supp. 138, 141 (W.D. Pa., 1969).

It thus appearing that the one-year Statute of Limitations (§215 CPLR) is applicable to this case and that

it had run prior to the commencement of the action on April 29, 1976, the action should be barred as against the defendant CBS.

Sec. 201 CPLR

"*** No Court shall extend the time limited by law for the commencement of an action."

POINT II

THE COMPLAINT FAILS TO SHOW DIVERSITY OF CITIZENSHIP BETWEEN THE PARTIES AND THE COURT, THEREFORE, APPEARS TO LACK JURISDICTION OF THE SUBJECT MATTER. THE ACTION SHOULD BE DISMISSED UNDER RULE 12(b)(1) OF THE FRCP.

The complaint merely alleges that "the plaintiff is a citizen of the United States who has resided within the jurisdiction of this Court during most of her life. . . ." (Par. 2) and that "defendants' residence is at 51 West 52nd Street, New York, New York, which is the address of its national headquarters." (Par. 4)

There are no allegations to show jurisdiction under §1332, Title 28 U.S.C.:

"(a) The District Court shall have original jurisdiction of all civil actions where the matter and controversies exceeds the sum or value of \$10,000.00 exclusive of interest and cost and is between

1. Citizens of different states

(c) For the purposes of this section and

Section 1441 of this title, a corporation shall be deemed a citizen of any state by which it has been incorporated and of the state where it has its principal place of business".

Diversity of citizenship between citizens of different states is indispensable to the jurisdiction of a Federal Court where jurisdiction is not acquired under a Federal Statute. In an action for libel (which apparently is the cause intended by the plaintiff in the action) the Court is without jurisdiction where there is a failure of diversity between the plaintiff and each and all of the defendants. Vose v. Roebuck Weather-Strip & Wire Screen Co. DCNY, 216 Fed.523 (1914); Lefkowitz v. Foster Hose Supporter Co. CCNY 161 Fed. 367 (1908).

In order for the Court to have jurisdiction, it must appear from the complaint that §1332, Title 28 U.S.C., is applicable.

In order for the Federal District Court to have diversity jurisdiction over the subject matter there must necessarily be complete diversity of citizenship - that is, the citizenship of the plaintiff must be diverse from that of each defendant. Salerno v. American League of Professional Baseball Clubs, 310 F. Supp 729 (S.D.N.Y. 1969).

Section 1332(a) of Title 28 USC requires that the party plaintiff shall be of different citizenship from the

defendant if the District Court is to be vested with original diversity jurisdiction. Herrmann v. Braniff Airways, Inc., 308 F. Supp. 1094 (S.D.N.Y. 1969).

The complaint fails to show and allege diversity of citizenship between the parties or that "the matter and controversies exceeds the sum of \$10,000 exclusive of interest and costs". The Court, therefore, lacks jurisdiction of the subject matter and the complaint should be dismissed under and pursuant to Rule 12(b)(1) of the FRCP.

CONCLUSION

The motion should be granted in all respects and an Order should issue pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure barring the action against the defendant pursuant to §215 CPLR and dismissing the action pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure upon the ground that the Court lacks jurisdiction of the subject matter; and the defendant herein should have such other and further relief as is deemed just and proper.

Respectfully submitted,
COUDERT BROTHERS
Attorneys for the Defent,
CBS Inc.

Carleton G. Eldridge, Jr.
Joseph D. Karp
Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

ELLIE MARTELL,	:	INDEX NO. 76 CIV. 1958
Plaintiff,	:	(JUDGE OWEN) (PRO SE)
-against-	:	NOTICE OF MOTION FOR DIS-
CBS, Inc.; WCBS AM RADIO	:	MISSAL OF ACTION PURSUANT
STATION, New York, N. Y.,	:	TO RULE 12(b)(1) and (6)
	:	FRCP AND § 1332(a)(1)(c)
Defendants.	:	TITLE 28 U.S.C. AND FOR
	:	BARRING OF ACTION AGAINST
	:	DEFENDANT PURSUANT TO §215
	:	CPLR.

----- -x

MADAME:

PLEASE TAKE NOTICE that upon the affidavit of Charles T. Bates, duly sworn to the 21st day of May, 1976, and upon the summons and complaint herein, the defendant, CBS Inc. will move before HON. ROBERT OWEN, in Room 301 of the United States Courthouse, located at Foley Square, Borough of Manhattan, City and State of New York, on the 17th day of June, 1976 at 2:15 p.m., or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure (hereafter FRCP) and §1332(a)(1)(c), Title 28 U.S.C., for the dismissal of the action upon the ground that it does not appear from the said complaint that there is diversity of citizenship between the parties and that, therefore, the Court lacks jurisdiction of the subject matter, and for the issuance of an

Date:

[Seal of Court]

NOTE: This summons is filed pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Order barring the action as against the defendant on the ground that it appears from the complaint that the Statute of Limitations (§215 CPLR) has barred the action as against the defendant prior to the commencement of the action and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
May 24, 1976

COUDERT BROTHERS

By s/ C. G. Eldridge, Jr
A Member of the Firm
Attorneys for Defendant,
CBS Inc.
Office and P. O. Address
200 Park Avenue
New York, New York 10017
Tel. No. (212) 973-3300

TO: ELLIE MARTELL (Pro Se)
6014 Adams Street
West New York, N.J.

Date:

[Seal of Court]

NOTE:—This summons is in compliance with Rule 1 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELLIE MARTELL,

Plaintiff,

: Index No. 76 Civ. 1958

-against-

AFFIDAVIT

CBS, Inc.; WCBS AM RADIO
STATION, New York, N.Y.,

Defendants. :

----- x
STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

CHARLES T. BATES, being duly sworn, deposes and says that he is an officer of the defendant, CBS Inc. (hereinafter "CBS"), to wit Secretary, and alleges as follows:

That the defendant, CBS, is a New York corporation with its principal place of business in the City, County, and State of New York, and that it is a licensee of the Federal Communications Commission for the operation of standard broadcast radio station, WCBS, which it owns and operates in New York City, New York, and which is erroneously referred to as a subsidiary in the complaint in the above action. .

That, upon information and belief, a copy of the summons and complaint was served on CBS Inc. on May 5, 1976.

Charles T. Bates
Charles T. Bates

Sworn to before me this
21st day of May, 1976.

Jerry Slater
Notary Public

JERRY SLATER
Notary Public, State of New York
No. 60-9039128
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1978

Date:

[Seal of Court]

NOTE:—This summons is pursuant to Rule 1 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ELLIE MARTELL, : INDEX NO. 76 CIV. 1958
 : (PRO SE)
Plaintiff, : (JUDGE OWEN)
-against- :
CBS, Inc.; WCBS AM RADIO : SUPPLEMENTAL MEMORANDUM IN
STATION, New York, N. Y., : SUPPORT OF MOTION BY
 : DEFENDANT, CBS INC.
 :
Defendants.

-----X

On March 23, 1976 the United States Supreme Court, in the case of Edgar Paul v. Davis, 44 L.W. 4337, held in an opinion by Justice Rehnquist, that the action which was brought under §1983 of the Civil Rights Statute (42 U.S.C.A.) and which was essentially one for defamation, did not invoke the guarantees of the Civil Rights Statute and, therefore, did not deprive the plaintiff of any "liberty" or "property" under the Due Process clause. The Court, therefore was without jurisdiction under the aforesaid Civil Rights Statute.

Likewise, in the instant case, wherein the plaintiff alleges that she was defamed by a radio broadcast

JUN 17 1976

(b, f) (5)
See Fed Rule (12B) F 28 USC A
CIV PROC
12 PS PA 830 Laughlin v London 38 & F Supp 884

of April 30, 1971, this Court is without jurisdiction under the Civil Rights Statute.

As appears in defendant's main brief, the Court lacks jurisdiction under the Diversity Statute (§1332, Title 28 U.S.C.).

Respectfully submitted

COUDERT BROTHERS
Attorneys for the Defendant,
CBS Inc.

*Rec'd
Coudert
Brothers
June 17/76*

2. In the past several weeks, not less than three sets of papers (under tight deadlines) had to be researched, prepared and served on all parties by the Plaintiff, who is without funds for staff help of any kind. She was overwhelmed with work, working very late nights hours and weekends to meet her deadlines.

3. The Plaintiff was physically unable to meet the deadline of filing opposition papers to the Defendant CBS, Inc.'s Motion to Dismiss.

4. She has no law library of her own.

5. As stated during the June 17 hearing, CBS violated FCC rules ("personal attack rule") when WCBS AM Radio failed to allow the Plaintiff to reply within one week, but she could not cite for the Court the Rule number without time taken for research, although CBS has not denied these and other assertions by the Plaintiff.

6. The plaintiff, in her Complaint _ _ _ _ _ asserts CBS, Inc., et al. interfered with her contracts, and whose actions caused cancellation of some contracts which impoverished her and forced her to operate under conditions of extreme economic hardship over a long period following WCBS's personal attack broadcast about her (ATCC).

7. If New York State laws were to apply here as asserted by the defendant, then certainly the SIX YEAR CONTRACTS STATUTE OF LIMITATIONS SHOULD APPLY due to the defendant's directly interfering with the Plaintiff's contracts, which actions were in no way denied by WCBS and which caused the Plaintiff to suffer great and continuing damages, following the defendant's attacks on her.

8. Had Plaintiff brought suit within a few months after WCBS's personal attack on her, the facts would have been the same as today (except for actual amount of damages).

9. Interference with the Plaintiff's contracts took place through use and abuse of the public's airwaves which CBS, WCBS are licensed to use by agreement with the people of the United States, the Federal Communications Commission. CBS, Inc., WCBS clearly breached its agreement contract with the FCC when it arrogantly violated FCC's Rules _____ ("personal attack rule.")

10. As stated in Par. 1 page 1 of the plaintiff's Complaint, her First Amendment and other constitutional rights were violated by the defendants and considerable discovery undertakings are needed by the Plaintiff to properly develop her evidence for a trial before this Court, which she requested additional time for due to her hardship conditions. Exercising her discovery rights are most important in this action, which she requested.

11. The exhibits attached to the Plaintiff's original Complaint show her outspoken advocacy on the side of New York State consumers in litigation with a major advertiser and cash contributor to the defendant's treasury. It is very evident that the Plaintiff's due process rights were violated by the defendants which directly prevented her from participating in litigation and rate proceedings in Albany in the defense of her own telephone rates as a subscriber to New York Telephone Company's services.

8. Interestingly the defendant has failed to deny in any respect that meetings took place at ^{about} the time of defendants' attacks on her, between WCBS news executives and New York Telephone executives and/or employees.

9. Clearly the acts complained about of defendants were so meticulously timed as to interfere with her contracts which directly funded her appearances before the New York State Public Service Commission in Albany, New York, and which cancellations deprived her of her due process rights guaranteed under the U. S. Constitution to defend her own telephone bill and therefore ^{her} deprived of her property through excessive telephone rates, without the due process with which she is uniquely experienced having spent approximately 200 days representing consumers and herself at ^{other} rate and regulation hearings on utility rates.

10. Attached as Exhibit A and B is the Plaintiff's pledges to the public to perform before the PSC on the matter of New York Telephone's rate-hike request of \$19¹/₂ Million per year. Shortly after her widely circulated public statements, she was attacked by the defendants which effectively kept her out of the Albany, N. Y. rate hearings she had agreed to participate in for approximately 12 hearings at the very least. The Plaintiff defaulted due to the defendants' directly interfering with her funding contracts which directly prevented her from performing as agreed, including auditing New York Telephone's books as agreed and under special PSC Order. Clearly New York State's Contract Laws apply here along with its SIX YEAR STATUTE OF LIMITATIONS.

11. The Plaintiff also defaulted on her agreements directly due to the defendants' interference with her contracts, and she was prevented from holding Business Consumers' Seminars which had been offered to a large number of customers (attached as Exhibit C) for the stated purpose of raising funds to fight a vigorous adversary action against New York Telephone's \$391 Million rate-hike application, as committed in the attached Business Week article by the Plaintiff.

12. The Plaintiff was prevented from bringing a suit against the defendants sooner due to her economic hardship suffered directly by defendants' actions, which again denied her her due process rights protected by the U.S. Constitution and Federal Courts. The Plaintiff is suing an entity, the defendants, that are licensed as interstate enterprises by the Federal Communications Commission and subject to Federal laws. The defendants knowingly violated and breached their agreements with the Federal Communications Commission when they steadfastly refused all of the Plaintiff's repeated requests to reply to their personal ^{within one week} attack/and thereby mitigate some of the damages against Plaintiff. FCC Rules on "personal attack rule" were additionally violated when defendants failed to send copies of the transcript of their "personal attack" despite repeated demands by the Plaintiff, the innocent target.of the defendants' recklessness.

13. The Court must not become a party to such injury which is detrimental to the public, by allowing defendants full enjoyment of their unlawful fruits gained by interference with Plaintiff's contracts and Civil Rights, without complete hearings, following full discovery rights exercised by her, as requested by the Plaintiff during June 17, 1976 hearing, relating to her guaranteed rights for opportunity to pursue her chosen occupation and locality of operations.

14. The Plaintiff was clearly injured by the defendants who are the gigantic leaders of the Media Capitol of the nation, due to her public interest work. Under the guarantees of her rights provided by the U.S. Constitution she is entitled to her choice of occupation and profession and mobility and not to be deliberately financially destroyed because of her choice of occupation and the location of her work and residence, which she is entitled to choose.

15. The Plaintiff is again defending illegal rates being collected by an advertiser of the defendants and she believes she again may be targeted for another destructive personal attack, and she has requested an injunction by this Court against potential and additional injury to her, and she has therefore requested her full exercise of her discovery rights.

16. Upon her return from Court on June 17, 1976 she found in the mail (postmarked June 16) an UNDATED document "SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION BY DEFENDANT, CBS, INC." In view of the summer library schedules now in effect, the Plaintiff requests 10 additional days for response to this. In addition, the defendant's use of the contents //

(Case Edgar Paul v. Davis, held in an opinion by Justice Renquist, during his argument on CBS's Motion to Dismiss, ^{and hearing} should be voided, as the Plaintiff vigorously objects to having been denied the opportunity to research whether or not it applies to her circumstances, or whether misapplied altogether. Therefore, the Plaintiff reserves the right to request re-arguments scheduled following the filing of her Response to "Supplemental Memorandum."

17. The Plaintiff denies any attempt to circumvent New York's Statute of Limitations and brought suit against the defendants just as quickly as she was capable to the extent of continuing her condition of economic hardship. Under D.C. Pa. 1974, under Pennsylvania law, applicable statute of limitations for action was one year to extent that action was an action for conspiracy to injure one in his business and profession and was SIX YEARS TO THE EXTENT THAT ACTION WAS AN ACTION FOR INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS. Fed. Rules Civ. Proc. rule 12 (b, f) 28 U.S.C.A. 12 P.S. Pa. Sec. 32. - Loughrey v. Landon. 381 F. Supp. 884.

18. Inasmuch as employees and facilities of the defendants were specifically employed for the purposes of conspiring to and interfering with the Federally protected Civil Rights and contracts of Plaintiff and according to information and belief at the request of defendants' major advertisers, this is clearly a case under the federal Civil Rights Act. D.C. N.J. 1967 42 U.S.C.A. Sec. 1983 N.J.S. 2A: 14-1 to 3 N.J.S.A. Hughes v. Smith 264 F. Supp. 767 - affirmed 389 F 2d 42. ... and one-year statute of limitations pertaining to defamation by libel or slander, were INAPPLICABLE TO ACTION FOR DAMAGES UNDER FEDERAL CIVIL RIGHTS ACT. 42 U.S.C.A. 1983, Sec.

19. The Plaintiff filed this Complaint properly in Federal Court for unlawful violations by defendants of her Federally protected rights guaranteed under the U. S. Constitution, Page 1 of Complaint.

WHEREFORE:

1. Additional time of 10 days is requested for response to "Supplemental Memorandum."
2. Arguments by defendant on June 17 "Motion to Dismiss" be voided and rescheduled for re-arguments.
3. Brief by Plaintiff be allowed.

Certificate of Service

Coudert Brothers served
June 21, 1976 Certified Mail

E. Martell
Ellie Martell

Respectfully submitted,

E. Martell
ELLIE MARTELL
(Appearing Pro-Se
6014 Adams St. WNY, N.J. 07093
(201) 854- 2939

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ELLIE MARTELL,	:	INDEX NO. 76 CIV. 1968
Plaintiff,	:	(PRO SE)
-against-	:	(JUDGE OWEN)
CBS, Inc.; WCBS AM RADIO	:	
STATION, New York, N. Y.,	:	
Defendants.	:	

-----X

DEFENDANT'S REPLY MEMORANDUM

The plaintiff's memorandum, which was received by mail on June 22, 1976, does not in any way answer the defendant's brief in support of the motion for the dismissal of the action. It is an unsworn, confused and lengthy memorandum containing irrelevant statements which are not alleged in the complaint.

Clearly, the complaint intends to allege a cause for libel and slander (Par. 12, p. 8 . . . "WCBS AM RADIO had libelled me . . .").

The action does not, and could not, contain any allegations of conspiracy as required by the Civil Rights Statute (§1985, 42 U.S.C.A.) Mimms v. Philadelphia Newspapers, Inc., 352 F. Supp 862 (Ed. Pa., 1972). There

*CBS did NOT approve C.M.'s request to file BRIEFs
made at June 17 hearing*

7

Rec'd JUN 25
14 EM

are no allegations showing, as required by the cases and the statute that the defendant acted "under color of State law" and that the plaintiff was deprived of rights, privileges or immunities under the Constitution of the United States. See the decision of the United States Supreme Court in Edgar Paul, et al. v. Davis, 44 Law Week 4337 (3/23/76).

In any event, as it has been pointed out in our main brief (p. 4), even if a cause or claim under the Civil Rights Statutes had been alleged (which it has not been), the applicable Statute of Limitations would be the one-year New York Statute of Limitations (§215 CPLR).

In Henig v. Odorioso, 385 F. 2d 491 (3rd Cir. 1967) the Court said at p. 493 as follows:

"[1, 2] Since the Civil Rights Act contains no provision limiting the time within which an action thereunder may be brought, the applicable Statute of Limitations is that which the State would enforce had the action seeking similar relief been brought in State Court. Swan v. Board of Higher Education of City of New York, 319 F. 2d 56 (2d Cir. 1963); Smith v. Cremins, 308 F. 2d 187, 98 A.L.R. 2d 1154 (9th Cir. 1962); Mohler v. Miller, 235 F. 2d 153 (6th Cir. 1956)."

Thus, the Statute of Limitations of New York, in which State the action has been commenced, is applicable and the action, therefore, is barred by §215 CPLR as of April 30, 1972.

In the case of Hughes v. Smith, 264 F. Supp. 767 (N.J. D.C., 1967), the action which was purportedly one for violation of civil rights and against police officers for the recovery of money damages for a personal injury to the plaintiff and for violation of his constitutional and statutory civil rights was barred by the court under the two-year New Jersey Statute of Limitations - i.e., the Statute of Limitations of the State in which the action had been commenced.

Disregarding the defamatory essence of the action (Morrison v. National Broadcasting, 19 N.Y. 2d 453, 459), the plaintiff seeks to apply the six-year Statute of Limitations, although the cause of action as alleged is not "upon a contractual obligation" nor is it one for inducing a breach of contract.

Realistically observed, the claim, as pleaded in the complaint, is intended to be one for defamation and nothing else. The plaintiff, therefore, "may not avoid the Statute of Limitations applicable to such a cause of action by the device of claiming that the cause of action is an action . . . to which a longer Statute of Limitations is applicable" (Noel v. Interboro Mutual Ind. Ins., 31 A.D. 2d 54, 55).

Therefore, the instant defamatory action which was

commenced more than five years after the alleged broadcast, is barred by the New York one-year Statute of Limitations (§215 CPLR).

CONCLUSION

Defendant's motion should be granted in all respects and an Order issue pursuant to Rule 12(b)(6) of the FRCP barring the action as against the defendant pursuant to §215 CPLR.

Respectfully submitted,

COUDERT BROTHERS
Attorneys for Defendant,
CBS Inc.

*Rec'd 9³⁰ PM
June 25/76*

*Rec'd EM
JUN 25*

NOTICE OF SETTLEMENT

INDEX No. 76 Civ. 1958 (Pro Se) 19
(R.O.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PLEASE TAKE NOTICE that

which the within is a copy, will be presented
settlement and entry herein to

ELLIE MARTELL,

he day of , 19
o'clock M.

Yours, etc.

COUDERT BROTHERS,
Attorneys for

PAN AMERICAN BUILDING
200 PARK AVENUE
NEW YORK, N. Y. 10017
TELEPHONE: 212 973-3300

-against-

CBS, Inc.; WCBS AM RADIO
STATION, New York, N.Y.,

Defendants.

DEFENDANT'S MOTION FOR DIS-
MISSAL OF ACTION PURSUANT TO
RULE 12(b)(1) and (6) FRCP

COUDERT BROTHERS,

Attorneys for
Defendant
CBS Inc.

PAN AMERICAN BUILDING
200 PARK AVENUE
NEW YORK, N. Y. 10017
TELEPHONE: 212 973-3300

Service of a copy of the within

is hereby admitted,

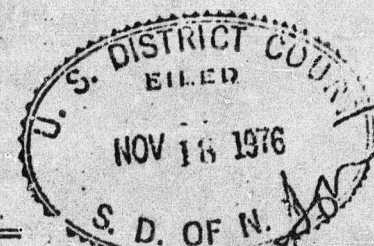
Attorney for

MEMORANDUM

The complaint herein ^{sounds} in
defamation, and I treat it as
such, Morrison v National
Broadcasting, 19 NY 2d 453 (1967).
The alleged defamation was
broadcast in 1971. This action
commenced in 1976, is therefore
time-barred. Civil Practice
Law and Rules § 215 provides
for a 1 year statute of
limitations in such cases.
The action is dismissed.

So ORDERED

Ran [Signature]
11/17/76



MICROFILM

NOV 18 1976

PAN AMERICAN BUILDING
200 PARK AVENUE
NEW YORK, N. Y. 10017
TELEPHONE: 212 973-3300

FRI APR 30 1971

Director Is Fired By Poverty Agency

By DOUGLAS ELDRIDGE

Evening News Staff Writer

Alvin L. Oliver was fired last night as executive director of the United Community Corp. on charges of improperly making deals between the Newark anti-poverty agency and a New York telephone consulting firm.

The ouster of Oliver — who held the \$20,500 job only 7½ months — was approved in a 22-2 vote of the corporation's trustees. The agency's executive committee had previously conducted a closed hearing on the charges, and voted unanimously to dismiss Oliver.

The board last night also designated Mrs. Lucille Puryear, who is in charge of program operations, to serve as acting director until a permanent successor is found. Mrs. Puryear has been with the agency almost since its inception in 1965.

Oliver, who sat silently through the brief meeting at the UCC's food training center, said afterwards that he will continue reporting for work until he re-



ALVIN L. OLIVER

ceives a three-month termination notice under his contract.

But David H. Barrett, president of the corporation, said the termination and the appointment of Mrs. Puryear are effective "at once."

Oliver declined comment on

the meeting and on the charges, and said he did not know what he will do next.

The executive director was found guilty by the executive committee of three charges of overstepping his authority in arranging contracts and issuing checks for the American Telephone Consumers Council and private telephone consultants.

Oliver entered into contracts totalling \$25,600 to set up a youth training program without obtaining the necessary approval of the agency's youth council, program committee or trustee board, according to the charges.

In addition, he was accused of insubordination because he allegedly continued to issue checks for the project after Barrett had refused to sign them.

Oliver was also charged with allowing the Telephone Consumers Council to solicit funds and materials for UCC without giving any accounting of them.

Other charges — of improper conduct and of payment of a

Continued P. 4, Col. 3

Oliver Fired From UUC Post

Continued From P. 1

full-time salary to a part-time worker — had also been lodged against Oliver, but were dismissed. All of the charges were made by Norman Gaskins, a vice president of the corporation, who said he had received complaints from members of the UCC Youth Council that their program funds were being spent for a training project they had never authorized.

Oliver had announced in February that a \$50,000 program to train young people as telephone consultants was being launched by the consumer group with federal funds channeled through UCC. The project has since been discontinued.

In addition, Oliver and a consultant for the consumer group, George Levine of New York, had joined in filing complaints with state and federal agencies against proposed telephone rate increases, and had announced a campaign against telephone costs by their two agencies.

Oliver Defense

In response to the recent charges, Oliver claimed his actions were within his powers as director. He said he had the authority to draw up programs, arrange contracts and retain consultants.

He also told the executive committee, which conducted a closed-door hearing April 17 and voted to fire Oliver April 22, that he would stand on his "total public record."

Oliver, 50, has been employed by the agency since January 1967, and was unanimously named director last Sept. 17 — with the full support of Barrett

and other black community leaders who had gained a dominant voice in the corporation.

Earlier last year, Oliver had made an unsuccessful bid for the East Ward seat on the City Council. He was a running mate of Mayor Kenneth A. Gibson on the Black and Puerto Rican Convention ticket.

His brief directorship at the corporation was marked by several controversies. Shortly after taking over, he purged the staff of many top-level officials, particularly those sympathetic to the old city administration.

At one point, the former director, Dr. L. Sylvester Odom, now a minister in Jersey City, came to the defense of employees facing Oliver's ax. Dr. Odom charged Oliver's own removal had been sought by the U.S. Office of Economic Opportunity because of alleged Communist activities.

Oliver refused to talk about his political past, but pointed out that his appointment to the directorship was approved by federal officials. The trustee board took no action on Dr. Odom's charges.

More recently, Oliver had incurred the wrath of some Puerto Rican leaders by appointing Ismael Lozada, a longtime employee, to a deputy director. The community spokesmen said Oliver ignored their objections for the post.

The recent move to fire Oliver have spurred the Committee to Action, led by James Jones (Imperial Wizard) and John Brown, to demand that Barrett

have been leading members of the black group.

The executive committee, however, bypassed both Bugg and Lozada in favor of Mrs. Puryear. Barrett said it was felt her longer experience was needed in the interim post.

Last night's meeting, which drew more than 100 persons, was marked by attempts by some trustees to split the question into two separate issues — firing Oliver and appointing Mrs. Puryear.

Barrett, however, with the support of the majority, succeeded in presenting the two questions in a single vote. About 30 of the agency's 45 trustees were on hand, but several abstained.

No other business was transacted at the meeting. Oliver had

prepared an executive director's report, but was not asked to give it. Instead, Barrett asked Mrs. Puryear to present an executive director's report — but she said she had none yet.

Mrs. Puryear joined the UCC as a bookkeeper after working 10 years with the Internal Revenue Service. She served also as assistant to the controller, executive assistant to Dr. Odom and administrative officer.

She is a graduate of East Orange High School and has taken accounting and management courses in college. She lives with her husband, Ira, an employee of the Passaic Valley Sewerage Commission, and their son at 37 Shepard Ave., and has been active in church and neighborhood groups.

The Evening News

NEWARK, N.J., FRIDAY, APRIL 30, 1971

Oliver blames Jersey Bell in loss of job

The former director of the United Community Corporation yesterday charged New Jersey Bell Telephone Co. took steps to get him fired because he testified the company was discriminating against the poor.

Alvin L. Oliver's remarks came at a State Public Utility Commission hearing in Newark dealing with New Jersey Bell's request for a \$79 million rate hike. Oliver had testified in January and sought to do so again yesterday.

Hearing Examiner Anthony Zarillo refused to allow Oliver to testify after 10 minutes of discussion, stating that the information in his prepared statement was not relevant to the proceedings and appeared to be a "personal grievance."

Michael O'Neil, attorney for Bell Telephone, termed Oliver's remarks "possibly libelous" and denied the charge that New Jersey Bell had anything to do with the loss of his job.

Oliver told Zarillo that since he had appeared at the hearing in January, he has been "beseiged by communications from community people" on the issues he raised.

Those issues were phone "deposits and double rates that exist in Newark," he said.

Oliver strongly objected to not being allowed to testify.

Zarillo replied that the hearing is "being held wide open and the public is welcome to testify anytime, any day, on matters that are pertinent and relevant to this proceeding."

Oliver was fired as director of the UCC, Newark's major poverty agency, on April 29. The trustees said he had entered into contracts with the American Telephone Consumers Council without the approval of the corporation.

MAY 6 1971 LEDGER

MAY 5 1971

NEWARK: STAR LEDGER

Why Bell System wants higher rates

As American Telephone & Telegraph Co. withered in a scissors-hold between its own deteriorating service and its inexhaustible demands for capital, its Chairman Haakon I. Romnes this week unfolded his solution to its tangled problems: more cash. But, to raise this cash, AT&T and its subsidiaries first must raise their rates—and therein lies a potent source of conflict.

The nation's biggest utility must return to the equity market for additional capital, Romnes says. He links the success of any financing to "our achieving a level of earnings that would warrant a market price for our shares considerably above the levels obtainable in 1970." His cash-raising program is spectacular, involving an additional 150-million shares of common stock and 50-million shares of preferred. Just as he is embarking on this program, AT&T's performance and rate structure are facing their heaviest attacks by swarms of angry critics ranging from congressmen to consumers' councils, from women's-lib groups to the man on the street.

New York Post

FOUNDED BY ALEXANDER HAMILTON IN 1801

DOROTHY SCHIFF... Editor-in-Chief and Publisher PAUL SANX... Executive Editor

Opening the Telephone Books

After a few frustrating calls to the telephone company—busy signals and no answers were apparently common—a group of subscribers who object to rate increases finally dialed the Public Service Commission. That turned out to be the right number.

As a result of a PSC order, the American Telephone Consumers Council and the Consumers Assembly of Greater New York expect to begin their own audit of the company's records starting next week. Their objective is the same as that of PSC hearings now in progress: to ascertain whether New York Telephone has any plausible claim for a 29.1 per cent

raise in rates. There is still a long distance between the company and its local customers. One official informed the PSC the other day that "the improvement in service is apparent everywhere."

But if the company has made any effort to compensate subscribers for almost daily confrontations with mechanical failure, the secret has been well kept.

The ATCC and the CAGNY are doing their best to establish a responsible, statistically sound analysis of the rate increase bid. The PSC has an obligation to provide both groups with a thorough hearing.

AMERICAN
TELEPHONE
CONSUMERS'
COUNCIL
Box 2288-GPO
N.Y., NY 10001
(212) 478-7375
478-7426
(202) 638-2584

NEW YORK POST

Phone Co. Ordered to Open Books

By CY EGAN
and STEVE LAWRENCE

The New York Telephone Co. has been ordered to open its financial records to inspection by consumer watchdog groups fighting its request for a 29.1 per cent increase in rates.

The order was issued by the state Public Service Commission after the phone company earlier this month refused to show its expense statements to the American Telephone Consumers Council and the Consumers Assembly of Greater New York.

Ellie Martell, ATCC's executive director, said examination of the records would begin next week to determine the validity of the company's claim that the rate increase is needed to improve deteriorated service, maintain profits and expand.

Miss Martell said auditors

from the federal General Services Administration and the office of State Controller Arthur Levitt would be requested to aid in the examination.

The PSC's order became known as the state agency entered the third day of its public hearing in Albany on the proposed rate increase, with phone company officials insisting that service problems are clearing up.

"We are making fine progress," Edward Goldstein, a phone company vice president, testified. "The improvement in service is apparent everywhere, and upstate the service has been good all along."

Ask Quick Action

But when asked by Charles R. Gibson, PSC counsel, whether phone service in New York had ever been as bad as it is now, Goldstein conceded: "Not to my knowledge."

PSC examiner Joseph J. Gottlieb said the agency would defer a decision on the phone company's request for a "temporary relief" \$284 million rate increase until after it collects enough data.

Company officials asked for quick action on the temporary increase, emphasizing that refunds would be made to customers if the PSC later disapproves. The company is seeking \$391 million a year in permanent increases.

The utility contends that it needs the additional funds to attract capital investment for expansion and service improvement. The consumer groups charge that rate increases are not justified in view of poor service.

Business Week

FEB. 27, 1971



AT&T critics Levine and Martell want an independent expert at rate hearings.

In November, for instance, it petitioned the Federal Communications Commission for interstate rate increases designed to yield \$385-million a year and other changes yielding \$160-million for a total increase in net of \$545-million per year. Dozens of "intervenor" lined up to object, including Atlantic Richfield Co., the National Retail Merchants Assn., and Ralph Nader. The case has turned into a major rate investigation that, says the FCC, will take six to nine months. It may take much longer, judging by precedents.

On the state level, where Bell's operating companies are pleading for rises in local phone rates (chart), normally somnolent hearings of public service commissions are ringing with complaints of all kinds too. Nowhere is the tumult louder than in New York State, where phone subscribers were stunned by New York Telephone Co. requests for two rate hikes on intrastate service totaling \$566-million a year. Metropolitan New York, which accounts for about 30% of the nation's interstate telephone revenues, will also be hit hard by the rise in long-distance rates.

New York's furious reaction to the proposed rate hikes is typical of the response such requests draw in many other areas. In Michigan, the state's Attorney General Frank J. Kelley stiffly demanded that Michigan Bell's application for an "open-end" rate increase be stated by the company in explicit dollar terms. In Kentucky, the public service commission blocked a \$118-million rate hike. In Wisconsin, the phone company seems to be sidling successfully around a complaint raised

rehearing called on a \$6.3-million increase recently granted.

Snarl. Right now, the fires of protest are burning very brightly in New York State. One newspaper columnist is urging readers to withhold payment of

15% of their phone bill each month until service improves. The state's Attorney General Louis J. Lefkowitz has fired off a letter to the state's Public Service Commission, demanding a full airing of the issues involved instead of the routine rubber stamp.

New York Telephone ran into its first real trouble in 1969, when it asked for a rate hike of \$175-million a year, which the Public Service Commission—in a complete break with precedent—rolled back to \$134-million and later to \$120.8-million. The company appealed to the State Supreme Court, won a stay on the last cut, and subsequently asked an appellate court for the full \$175-million a year.

While battling the PSC, New York Tel is drawing fire from other snipers. Congressman Edward I. Koch, a Manhattan Democrat who wants the New York City Council to send a "consumer accountant" to the hearings of all rate-making bodies, said "we can't depend on the PSC . . . because it's not possible to be judge and defense at the same time." New York Tel's rate request, he added, was "pure *chutzpah*."

Concern. What may become a broader attack is being launched by Ellie Martell and George Levine, who hope to use their American Telephone Consumers Council as a base to raise \$50,000 from 2,500 Manhattan businesses to hire a telephone-rate expert to present the consumer's case at the next PSC hearings. Mrs. Martell, and other consumer groups are pestering the Lindsay administration to step in.

The Consumer Assembly of Greater New York, which represents about 100 organizations, is also preparing to testify at the New York hearings. Executive Director Don Elberson says: "We have been less than enthusiastic about the city's role in telephone cases in the past. A group of 1,000 young attorneys, the New York Council of Law Associates, who practice voluntary public-service law, has been asked to help by Elberson's group and others."

So far, New York City has adopted a "wait and see" attitude, and corporations are diffident about opposing another corporation publicly. But the stakes are high for both the city and the corporations, particularly in a time of tight budgets.

New York City's annual phone bill has leapt from \$5.1-million in 1965 to \$13.4-million in the fiscal year that ended on June 30, 1970. Some New York-based corporations have annual phone bills rivaling that of the city. For example, Mobil Oil Corp. and Sperry Rand Corp. have telecommunications costs in the \$15-million range for domestic service. Continental Can Co. pays \$7-million a year for its phone service, and Equitable Life Assurance Society pays \$4-million.

\$2-billion more for Bell

Increases granted 1970-1971

State	Millions of dollars a year	
	Request	Grant
Connecticut	\$23.9	\$13.2
Delaware	2.8	2.3
Florida	32.0	21.1
Florida*	18.4	18.4
Georgia	25.5	20.8
Illinois	86.5	77.9
Indiana	5.1	5.0
Kentucky	2.1	1.2
Kentucky	14.8	0
Louisiana	24.6	9.1
Maine	NA	1.5
Massachusetts	55.0	33.0
Michigan	48.1	14.8
New Hampshire	2.0	2.0
New York	175.0	175.0
Ohio	80.0	55.0
Ohio	13.3	9.7
Oregon	1.6	1.6
Oregon	1.1	1.1
Rhode Island	9.2	5.9
South Carolina	3.2	3.2
Tennessee	4.7 [est.]	3.6
Wisconsin	17.8	18.4

Total \$646.7 \$493.8

*Includes independent telephone companies

NA -Not Available

Increases pending

California	\$194.9
Colorado	28.5
District of Columbia	13.3
Illinois	2.2
Indiana	25.0
Michigan	20.0 [est.]
New Jersey	79.0
New York	391.0
North Carolina	23.1
Oregon	20.6
Pennsylvania	73.3
Texas [El Paso]	1.2
Washington	24.9
West Virginia	11.1
Interstate [FCC]	385.0
Other interstate	160

Total requests before commissions \$1,453.1

Total granted and pending increases \$1,946.9

UCC Steps Up Drive to Keep Urban Telephone Rates Down

By DOUGLAS ELDRIDGE

Evening News Staff Writer

The United Community Corp., the Newark antipoverty agency, is stepping up its campaign against the telephone company. Alvin L. Oliver, executive director, announced at a press conference yesterday that the agency is:

- Urging the Federal Communications Commission to cancel an \$11 million increase in interstate long-distance rates for coin telephone users.

- Pressing the New Jersey Public Utilities Commission to equalize telephone rates throughout the state so that urban users will not have higher bills.

- Preparing to ask N.J. Bell Telephone Co. for a refund of 25 per cent on more than \$100,000 paid for service since 1965.

Oliver and George Levine, a communications consultant, charged at the press conference that rates of American Telephone & Telegraph Co. discriminate against city dwellers, the poor and minorities.

The UCC and a New York group known as the American Telephone Consumers Council have asked the FCC to exempt coin-telephone users and hotel guests from a \$250 million increase in long distance rates granted Feb. 26. The two groups have also asked the AT&T calculate and grant refunds to any coin telephone user if the rate increase is rescinded.

Oliver and Levine coin telephone rate hikes impose a particular burden on poor people who cannot afford home phones. They also said the rate increases have a hard impact in cities like Newark, because many calls are made across state lines.

Levine said the cost of an interstate call in the 23-to-30-mile range has gone up from 30 to 45 cents. The minimum charge for an interstate coin telephone call has risen from 15 to 20 cents under the temporary authorization from the FCC.

The two men said they want hotel residents exempted from the increase because many of

them may be on welfare, as in New York.

AT&T has contended that only 5 per cent of the people who make long-distance calls on pay phones do not have telephones at home. The company has also claimed that it cannot keep records of who makes payments on coin telephones without employing 2,900 additional operators across the country.

But Oliver said a survey of two Newark housing projects, Columbus Homes and Baxter Terrace, showed only 31 per cent of the apartments have telephones. This means, he said, 69 per cent of the residents must use pay phones for all calls.

On the state level, Oliver said

this agency is still fighting a \$79 million increase for N.J. Bell. He said the poverty agency also wants a single uniform rate throughout the state.

At present, Levine said, the minimum monthly charge for a private line ranges from \$3.35 in some rural areas up to \$6.55 in Newark. If the rates were equalized, the Newark rate would probably be lowered—and this could mean a saving of \$12 million a year to Newark customers, Levine said.

Oliver reported his agency is also seeking a 25 per cent rebate on past bills under a tariff permitting such a discount for charitable organizations.

He estimated that UCC will be

seeking \$25,000 to \$30,000 from N.J. Bell. He said the total overpayment for all antipoverty agencies in the city might run up to \$250,000 for the last six years.

The telephone company, however, has not yet recognized the charitable status of the Newark agency.

The corporation director also announced yesterday the establishment of a \$50,000 program to train 20 young people as telephone and public utility specialists.

The program will be set up with Levine's assistance at Area Board 6 (Mutual Concern) at 74 Oraton St., and will be designed for young people 18 to 25. The program will prepare them for work with the telephone company or with businesses and government agencies.

The enrollees will spend three hours daily in training and will also make field trips to communications facilities.

Oliver said the program has received approval from the U.S. Office of Economic Opportunity. No starting date has been set.

MARCH 1971
NEWARK EVENING NEWS

OVER THE past month, since formally announcing his candidacy Jan. 4, Muskie has:

- Vaulted into a commanding 13-point lead in the Gallup poll over his strongest Demo-

convention delegates. But despite all these pluses, Muskie is still a long way from locking up the nomination, as Democratic party reformers already seem certain to

increasingly nervous that Muskie's steady—if sometimes unspectacular—progress may give him an invincible lead by the end of the first round of

offset any such impression. "We may very well lose in Florida," a top Muskie political strategist concedes here.

primaries and more than you lose, and to win more than anyone else does. We're going to do that."

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DETROIT FREE PRESS SUNDAY 2/6/72

UAW Goes into Phone Business

BY GEORGE CANTOR
Free Press Staff Writer

The telephone company had some bad news for the UAW when the auto workers completed their new Region 1B headquarters in Madison Heights.

Regional Director Ken Morris was told the push button phones he wanted weren't available in the area and that the equipment he could get could cost \$650 a month.

After some deliberation,

Morris decided that he'd give Michigan Bell some bad news of his own. He bought his own telephone system.

Under the direction of George Levine, a communications consultant hired by the UAW, the headquarters building at 711 W. Thirteen Mile was supplied with a privately-owned telephone hookup partially connected to Michigan Bell lines.

"It gives you the best of two worlds," Levine explained.

"You get exactly the equipment that you want with the features you need with the Bell lines backstopping you in case anything goes wrong."

The private system gave Morris his push button phones. And his bill, so far, has averaged \$225 a month.

Over a 10-year period, operation of the system will cost \$49,231. Bell's projected figure for its service was \$77,688, and the equipment would only be rented.

These sorts of figures have so intrigued the UAW that two other regional directors are seriously considering installing the system in their offices.

LEVINE'S system is based on seven interfaced lines that carry outgoing calls to Detroit and Madison Heights through a private switchboard. This system also handles internal calls.

Calls that come into the building, though, are taken by

a standard Bell switchboard. Every office has two phones—a yellow one for the private outgoing calls and a white one for the Bell system's incoming messages.

Levine claims his system can be adapted to any advance in communication technology that Bell may develop. Since phones plug into stations they can be moved easily or replaced if anything goes wrong with the receiver itself.

The system also restores some competitiveness to the field of telephone communications, he said.

Levine is chief consultant for the New York-based American Telephone Consumers' Council, a group that has represented phone users in grievances against utilities and has opposed utility rate increases.

"The big drawback is service," said a Michigan Bell spokesman about Levine's system. "If the customer owns the equipment he is responsible for its maintenance and repair, not us. We feel our service, by and large, is tops, and it's always available."

"And I don't see the big advantage of having two completely separate phones on your desk, either," he said.

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Hart Fights Nixon's Value-Added Tax

BY SAUL FRIEDMAN
Free Press Washington Staff

WASHINGTON—Sen. Philip A. Hart, D., Mich., a bellwether for liberal Democrats, say he is opposed to the value-added tax, which the administration is considering.

Hart suggested that Democratic presidential candidates intend to warn voters that President Nixon will seek such a tax next year if he is re-elected.

The White House has confirmed that the administration has a "favorable attitude" toward a value-added tax, known as "VAT," to help finance schools and reduce property taxes that now go for education.

A value-added tax is one which is tacked on to the cost of a product during each stage of manufacture. The added cost is ultimately passed on to the consumer, being like a national sales tax.

Hart called VAT "hidden and regressive ... an invisible tax

that politicians can hide behind."

"WHEN TAXES ARE hidden, officeholders are freer to raise levies," Hart said. "When taxes are in the open and clearly labeled, the citizens are in a better position to affect the decisions."

"As with any levy based on consumption, a value-added tax would fall hardest on moderate and low-income families."

Hart criticized both Congress and the administration for cutting income taxes, which he called "the nation's most progressive tax system," while state and local taxes were increased.

Hart voted for the income tax cuts, however. To replace property taxes with a value-added tax, Hart said, is "another step toward a more regressive tax system."

Instead of a value-added tax, Hart suggested that closing tax loopholes would raise at least \$17 billion.

The value-added tax under White House consideration would raise about \$16 billion.

is a

Detroit Free Press

THE SECOND FRONT PAGE

Friday, November 19, 1971

State Limits Bell In Rate Hike Bid

From UPI and AP

LANSING — The state Public Service Commission (PSC) Thursday clamped a lid on the amount of rate increase Michigan Bell Telephone Co. may ask for during current rate hearings.

The PSC said \$59.7 million is the highest figure it will consider in Bell's long-standing request for a rate increase and it will exclude any testimony showing a revenue deficiency of more than \$59.7 million.

The company first announced its intention to seek a rate increase last December, spelling out details in March.

It asked \$59.7 million. Later, the 12-month period for analysis of financial data was changed, and the firm submitted figures showing a greater deficiency.

In written testimony submitted to the PSC in October, Bell said it would need a \$122 million rate increase to earn at the rate of return it feels is warranted.

Meanwhile, the company has asked for an immediate interim rate increase of \$19.9 million pending outcome of the full request.

The commission said it expects to rule soon on the temporary increase and to rule early next year on the full increase.

The rate amount question was the object of a dispute between Michigan Bell officials and major intervenors, including the state attorney general, city of Detroit and UAW, who are actively opposing the rate increase.

In August, 1970, the commission approved rate increases totaling \$14.8 million — the first for Michigan Bell in 10 years after several reductions.

The rates took effect 13 months ago for some 2.5 million customers.

Open Fire On Phone Hike Bid

By RICHARD GOODING

Consumer advocates reacted quickly and angrily today to the 12.8-per-cent rate increase requested by the New York Telephone Co.

"Give them a finger and they'll try to take an arm," was the way Ellie Martell of the American Telephone Consumers Council emphasized her opposition.

While the phone company was filing its shopping list with the Public Service Commission, Mrs. Martell and some other longtime thorns in Ma Bell's financial side were already gearing up their counter-arguments.

And although they called any increase unjustified, it was apparent the focus of their attacks on two proposals.

Both of them—the 20-cent public coin-box call and the timed-rate option for residential users—have been requested, fought and denied in the past.

"The 20-cent call? Oh, yes, we'll fight that again," said Mrs. Martell. "This will be the third round for that obnoxious proposal."

While New York Telephone argues that a dime a call is too little to pay the way for phone booths, Mrs. Martell argues that many people are forced to use public phones because a home phone has become too expensive.

Bronx Borough President Robert Abrams echoed that, calling the 20-cent call "particularly distressing" and "discriminatory."

But it's the proposal for timing local calls that both find most troublesome in the long run.

At present, time is neither measured nor limited on calls made within certain local areas. The residential consumer is given 50 message units a month for \$7.42 (\$7.82 with the requested increases) and can talk as long as desired within those local zones for one unit.

The phone company is suggesting a new option, to be applied at first only in the New York and Buffalo metropolitan areas: A monthly rate of \$6.82 if the user limits each of the 50 calls to less than five minutes. For each minute beyond five, the cost would increase.

"People will say, 'Oh, that's just an option and it's cheaper,'" said a spokesman for Abrams. "But there's more to it than that."

"Making it optional is just a smokescreen for making it mandatory later on. They've been pressing to go to time measurements for all local residential calls for several years and it will be terribly punitive if they get it."

To Abrams there is an important tradition involved. Mrs. Martell called it "the customers' right to rap."

Both spoke of people chatting with nearby relatives, of the elderly using the phone "as a lifeline to the outside world," of church, community and political

Continued on Page 12

Open Fire On Phone Hike Plea

Continued from Page 3

groups needing long-duration phone time to do their work.

"The cost of all this measuring of calling times is tremendous," said Mrs. Martell. And Abrams' spokesman took it a step further:

"You can bet they wouldn't go to the expense of installing timing equipment if they weren't thinking of making it the only option available."

Beyond specific proposals, the opponents pointed to vastly increased profits at New York Telephone in recent months and a slowed rate of inflation to argue that the company, which has received \$345 million in rate increases in the past 13 months, does not need a further \$393 million.

Company Responds

The company president, John R. Mulhearn, responded to that yesterday. This year's profit, or rate of return on investment, was running about 9.05 per cent, he said, less than the 9.24 per cent earning rate allowed by the PSC.

According to Mulhearn, the new rates "are aimed primarily at our 1978 needs" (since it's expected to take a year for a PSC ruling) and "with inevitable increases in taxes, wages, benefits, and other costs, our earnings will turn down sharply next year."

Other features of the increases and charges requested were:

□ Residential installation charges up to \$40, from \$18.

□ Extension phone installation up to \$20, from \$4.

□ Operator-assisted calls up to 75 cents, from 60 cents.

□ Raising the surcharge on person-to-person calls to \$1.50 from the current variable rate of \$1 to \$1.40.

□ A 50-per-cent discount on message unit pricing on calls placed between 11 p.m.

16a

May 17, 1976

To: The Honorable *RICHARD OWEN*
Judge Owen
U. S. District Court
Southern District
New York, N.Y. 10007

Re: Locket 76- 1958
ELLIE MARTELL vs. CBS, Inc., et al.

Dear Justice Owen:

In an effort to conserve the valuable time of the Court and hold down the costs of this legal action, I have requested counsel for the defendants to voluntarily submit to me and the Court...a written transcript of the news broadcast at issue...of April 30, 1971, between the hours of 5:00 PM and 7:30 PM.

According to Federal Communications Commission rules, I believe I have been entitled to receive (prepaid) said transcripts and in my opinion, CBS, Inc. and WCBS AM RADIO STATION, NY, NY were in violation of the rules when my repeated requests for the transcripts were refused.

This final request for the cooperation of CBS, Inc. et al to voluntarily submit said transcripts to the Court so that inspection and review will be possible, if desired, is a reasonable request and intended for the benefit of all parties.

Thank you for your consideration.

Respectfully submitted,

ELLIE MARTELL
(Appearing Pro Se)

6014 Adams St.
West New York,
New Jersey 07093
(201) 854-2939
Phone out-of-service

No. 321363

RECEIPT FOR CERTIFIED MAIL—3C (plus postage)

SENT TO
Leon Rice Esq. c/o CBS Inc
STREET AND NO
51 W. 52 St.
P.O. STATE AND ZIP CODE
New York, N.Y. 10009

POSTMARK
OR DATE



OPTIONAL SERVICES FOR ADDITIONAL FEES
1. Shows to whom and date delivered 15c
With delivery to addressee only 65c
2. Shows to whom, date and where delivered 35c
With delivery to addressee only 85c
DELIVER TO ADDRESSEE ONLY 50c
SPECIAL DELIVERY (extra fee required)

PS Form
Apr. 1971 3800

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See other side)

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Box 2288, General P.O., N.Y. 10001

PHONE NUMBER: (201) 854- 2939

May 17, 1976



To: Leon Rice, Esq.
Resident Attorney
CBS, Inc.
51 West 52 St.
New York, N.Y. 10019

(Re:
(Pocket 76-1958
(U.S. District Court
(Foley Square, NYC

Dear Mr. Rice:

In the interest of justice and in an effort to keep
down the costs of the above legal action, which, if found in
favor of the plaintiff, could become a cost billed against
CBS, Inc. stockholders...I am requesting that your office
mail to me immediately the transcript of CBS AM RADIO, (news)
New York, New York, transmitted between 5:00 P. and 7:00 P.,
April 30, 1971.

Please be sure to include every word transmitted relating to,
on the subject of my organization, the American Telephone
Consumers' Council. The transcripts requested are in written
form and have been repeatedly requested by me since the time
of the broadcast on April 30, 1971.

In addition, please mail a copy of said transcript
to Judge Owen, U. S. District Court, Southern District, Foley
Square, New York, N. Y. so that Judge Owen may review the
exact transcript, which is the subject of my complaint.

Your consideration will be appreciated.

Very truly yours,

cc:
The Honorable
Judge Owen

ELLIS MARILL
6014 Adams Street
East New York,
New Jersey 07093

Phone: (201) 854-2939
(Out of Service)

Appearing Pro-se

*sent
attorney
mail*

1/7/77

USCA

77-7010

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELLIE MARTELL,

Plaintiff,

-against-

CBS, Inc.; WCBS AM RADIO
STATION, New York, N.Y.,

Defendants.

Case No. 76 Civ. 1958

(Judge Richard Owen)

NOTICE OF APPEAL

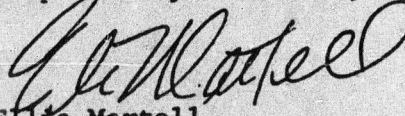
This is the plaintiff's Notice of Appeal filed for the following reasons:

(1) The Court is believed to have erroneously dismissed the plaintiff's case on grounds that the alleged defamation "is time-barred" due to a one-year statute of limitations in such cases.

However, the plaintiff had submitted her complaint and subsequent papers alleging violations of her Federally guaranteed rights under the U. S. Constitution and in addition...unlawful interference with her contracts which covering statutes have not run out under New York State laws.

WHEREFORE: the plaintiff respectfully requests the Court's permission to pursue her appeal in the Second Circuit.

Respectfully submitted,



Ellie Martell

Appearing pro-se
6014 Adams St.

West New York, N. J. 07093

Phone: (201) 854- 2939

Dated:

December 17, 1976



Certificate of Service

I have served Coudert Brothers
on Dec. 17, 1976 by 1st Class Mail

19A